S.B.Civil Second Appeal No.308/2004

Kailash & Anr.

vs.

Legal Representatives of Shankar Lal

DATE OF ORDER : - 6.10.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.A.K.Acharya, for the appellant.

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Heard learned counsel for the appellant. Perused the reasons given in the judgments of the two courts below.

Learned counsel for the appellant submits that appellant-plaintiff had no knowledge of the complete facts at the time of filing of the suit, therefore, when he got documents subsequently after the decision of the trial court, he submitted an application under Order 41 Rule 27CPC and sought permission to produce further evidence. The trial court rejected the application and thereby committed serious illegality.

It is clear from the facts as pleaded by the plaintiff that he claimed that the property in dispute is his ownership property and very specifically pleaded that it is his Pattasudh property. By submitting a letter of the year 1945, the

plaintiff wants to say that in fact, the plaintiff or plaintiff's predecessor were not owner of the property, but they were tenant in the premises.

In view of the above facts, I do not find that the first appellate court has committed any illegality in rejecting the application under Order 41 Rule 27 CPC on the ground that the plaintiff wants to change the total stand taken by him in the suit, that too, after an inordinate delay.

Since, I do not find any illegality in that order and after perusal of the facts of the case, I do not find that any substantial questions of law is involved in this appeal, therefore, the appeal of the appellant is dismissed.

(Prakash Tatia), J.

c.p.goyal/-